

REMARKS

I. Summary of the Examiner's Action

A. Claim Rejections

As set forth in paragraph 6 on page 2 of the November 14 Office Action, claims 1 – 3, 9 – 10, 16 – 18, 20 – 23, 26 – 30 and 34 – 45 stand rejected under 35 USC 103(a) as being unpatentable over United States Patent Serial No. 6,128,661 to Flanagin (hereinafter “Flanagin” or “the Flanagin patent”) in view of United States Patent Application Publication No. 2005/0198376 A1 to Kotzin (hereinafter “Kotzin” or “the Kotzin application”).

As set forth in paragraph 7 on page 9 of the November 14 Office Action, claims 5 – 7, 13 – 15, 19, 25 and 32 – 33 stand rejected under 35 USC 103(a) as being unpatentable over Flanagin in view of Kotzin and further in view of United States Patent Application Publication No. 2004/0185885 A1 to Kock (hereinafter “Kock” or “the Kock application”).

As set forth in paragraph 8 on page 11 of the November 14 Office Action, claims 4, 24 and 31 stand rejected under 35 USC 103(a) as being unpatentable over Flanagin in view of Kotzin and further in view of United States Patent Application Publication No. 2004/0023664 to Mirouze *et al.* (hereinafter “Mirouze” or “the Mirouze application”).

As set forth in paragraph 9 on page 12 of the November 14 Office Action, claim 11 stands rejected under 35 USC 103(a) as being unpatentable over Flanagin in view of Kotzin and further in view of United States Patent No. 5,961,588 to Cooper (hereinafter “Cooper” or “the Cooper patent”).

As set forth in paragraph 10 on page 12 of the November 14 Office Action, claim 12 stands rejected under 35 USC 103(a) as being unpatentable over Flanagin in view of Kotzin and further in view of United States Patent No. 6,882,659 to Novak *et al.* (hereinafter “Novak” or “the Novak patent”).

These rejections are respectfully disagreed with, and are traversed below.

II. Applicants’ Response – Claim Rejections

A. Rejection of Claims 1 – 3, 9 – 10, 16 – 18, 20 – 23, 26 – 30 and 34 – 45 under 35 U.S.C. 103(a)

Claim 1 is reproduced here as a convenience to the Examiner (emphasis added):

1. A method of transferring service settings from a first device to a second device, wherein the first and second devices each have the same predetermined hierarchical data structure, comprising:

 sending a data transfer request identifying a first portion of the hierarchical data structure from the first device to the second device, the first portion comprising data descriptive of service provider provisioned service settings for a first service;

copying the data descriptive of service provider provisioned service settings stored at the first portion of the hierarchical data

structure of the second device from the second device to the first device;
storing the copied data at the first portion of the hierarchical data structure of the first device; and
using, at the first device, the data stored at the first portion of the hierarchical data structure as settings for the first service.

Applicant respectfully submits that the relied-upon combination neither describes nor suggests the emphasized subject matter. As a result, the Examiner has not established a prima facie case of obviousness because the relied-upon combination does teach each and every limitation of claim 1. Accordingly, Applicant respectfully requests that the outstanding rejection be withdrawn.

Applicant notes that the Examiner has not adequately responded to Applicant's previous arguments regarding the fact that Kotzin is not seen to remedy the deficiencies of the Flanagan reference. Applicant will present further arguments regarding the deficiency of the relied-upon combination. In the interest of preparing for further proceedings in the case, Applicant will present additional bases of distinction so that all arguments supporting the patentability of the claims can be considered.

In particular, claim 1 makes reference to "sending a data transfer request *identifying a first portion of the hierarchical data structure ...*"; "copying the data descriptive of service provider provisioned service settings *stored at the first portion of the hierarchical data structure* of the second device from the second device to the first

device”; “*storing the copied data at the first portion of the hierarchical data structure of the first device*”; and “using, at the first device, *the data stored at the first portion of the hierarchical data structure* as settings for the first service.” In order to set forth a proper basis of rejection, each and every claim element must be present in the relied-upon combination. It is not seen where the foregoing emphasized portions of claim 1 appear in the relied-upon portions of the Flanagan reference.

In particular, Applicant reproduces the relied-upon portion of Flanagan appearing at column 2, line 65 – column 3, line 19 here:

“FIG. 1 is a block diagram of a typical system or environment 2 in which the present system operates. In the embodiment illustrated, the environment 2 includes a first mobile device 3A and a second mobile device 3B. Each of the mobile devices 3A and 3B includes one or more application programs indicated at 5A, 5B and 5C, and a store 6 used to store objects, data files and/or databases used by the application programs 5A - 5C. A computer, herein illustrated as a desktop computer 4, also includes one or more application programs indicated at 7A, 7B, 7C and 7D, and a store 8 used to store objects, data files and/or databases used by the application programs 7A-7D. In some circumstances, it is desired that at least some of the objects on stores 6 and 8 be either copied or transferred in order that the user can access the same information regardless as to whether the mobile device or the desktop computer 4 is being used. Although illustrated wherein each mobile device 3A and 3B includes the same application programs 5A-5C, it should be understood that each mobile device 3A and 3B can be individually configured as desired by each respective user to contain one or a number of application

programs, some of which can correspond to application programs 7A-7D residing on the desktop computer 4.”

Applicant submits that the neither the foregoing portion of Flanagan nor any other portion of Flanagan either describe or suggest the emphasized subject matter of claim 1. In particular, it is not seen where “sending a data transfer request *identifying a first portion of the hierarchical data structure...*” is either described or suggested in this or any other portion of Flanagan.

Regarding Applicant’s previous arguments, Applicant’s invention is concerned with transferring service settings for use in operating a service from a first mobile device to a second mobile device. Kotzin, on the other hand, is concerned with transferring content (particularly content subject to protection by digital rights management software) from one mobile device to another.

Notwithstanding the Examiner’s efforts to ignore what Kotzin actually states, Applicant repeats that it is not seen what relevance the Kotzin reference has to the relevant subject matter of claim 1. As a result, it is not seen how Kotzin can remedy the admitted deficiencies of Flanagan. The relevant subject matter of claim 1 is concerned with “service settings”, and the Kotzin reference is concerned with “content”. “Content” generally refers to artistic material that is available in an electronic setting for playback by a user.

As discussed in Applicant's previous response, there is a difference between "service settings" and "content" that simply cannot be ignored. As is apparent from the portion of Kotzin reproduced in Applicant's previous response, "content" as used by Kotzin does not concern "service settings". Since "content" and "service settings" are separate and distinct, Kotzin teachings with respect to "content" simply cannot remedy Flanagan's deficiencies with respect to "service settings".

Accordingly, Applicant respectfully submits that claim 1 is patentable over the relied-upon combination.

Applicant presents the following additional arguments further supporting the patentability of certain of the dependent claims.

Claim 2 recites "wherein copying data comprises copying a data file stored at the first portion of the hierarchical data structure that is associated with an identifier stored in a first smart card." Paragraph [0028] of Kotzin neither describes nor suggests this subject matter of claim 2. In particular, this portion of Kotzin has to do with bar codes and scanners. It is not seen what relevance operations of bar codes and scanners have to do with the subject matter of claim 2. These arguments are applicable to claims 22 and 29 as well.

Claim 3 recites "wherein the copied data file comprises the identifier." Paragraph [0023] of Kotzin provides a description in general terms of a wireless

communications device that is apparently of relevance to the methods of Kotzin. Paragraph [0023] mention “uniquely identifiable set of information”, but it is not seen what is used to identify the “uniquely identifiable set of information”. If the Examiner disagrees, Applicant respectfully requests that the Examiner identify with particularity exactly which portion of paragraph [0023] that the Examiner is relying on. If the Examiner is unable to do so, Applicant requests that the rejection of claim 3 be withdrawn for these additional reasons. These arguments are applicable to claims 23 and 30 as well.

Claim 9 recites “wherein the copied data comprises settings controlled by the service provider of the first service.” Applicant submits that the foregoing arguments regarding “content” and the Kotzin reference are equally applicable here. It is not seen how content transfer as described in Kotzin has any relevance to “settings controlled by the service provider of the first service.” This further supports the patentability of claim 9.

Claim 10 recites “wherein the copied data includes data identifying user selections made during user configuration of the first service.” The relied-upon portion of Kotzin speaks in generalities and simply is not specific enough to conclude that this subject matter of claim 10 is present. If there is any doubt, Applicant reproduces the relied-upon portion of Kotzin here:

“A method and apparatus for transferring information between electronic devices is disclosed. A first electronic device has information,

commonly referred to as data or content, stored therein. The content is transferable to another electronic device, either from the first electronic device or another source. To transfer the content between a first device and a second device, the user selects the desired content to be transferred. Next, a uniquely identifiable set of information is associated with the content. The uniquely identifiable set of information is then transferred to the second device. The second device receives the content from a source having at least the uniquely identifiable set of information.”

This portion of Kotzin is simply too general to allow one to conclude that the specific subject matter of claim 10 is present. This further supports the patentability of claim 10.

Claim 27 recites “further comprising means for housing a smart card that enables the device to participate in a telecommunications network, *wherein the processor is operable to read data from the first portion of the hierarchical data structure that depends upon the identity of the housed smart card.*” Applicant respectfully submits that for a proper rejection to be set forth all elements of the claim must be found in the relied-upon combination. The foregoing emphasized portion of claim 27 is neither described nor suggested by the relied-upon portion of Kotzin. It is not seen what relevance operations performed using scanners and bar codes have to do with this subject matter of claim 27. These arguments also provide additional support for the patentability of claim 35.

In view of the foregoing arguments, Applicant respectfully requests that the Examiner withdraw the rejection of claim 1. Applicants also respectfully submit that independent claims 21, 26, 28, 34, 40 and 43 are allowable for reasons similar to those set forth above with respect to claim 1. Applicants respectfully submit that the remaining art, whether taken singly or in combination with the primary combination does not remedy the deficiencies of the Flanagin and Kotzin combination. Accordingly, Applicant respectfully submits that the remaining dependent claims are allowable both as depending from allowable base claims and for reasons having to do with their independently-recited features.

B. Rejection of Claims 5 – 7, 13 – 15, 19, 25 and 32 – 33
under 35 U.S.C. 103(a)

Claim 5 recites “wherein the copied data file is usable, at the first device, as settings for a first service when the first smart card is used with the first device.” Although paragraph [0052] of Kock mentions movement of a SIM and “book-keeping” operations to track the movement, it is not seen where “the copied data file is usable, at the first device, as settings for a first service when the first smart card is used with the first device” is either described or suggested. Applicant therefore respectfully requests that the rejection of claim 5 be withdrawn. Similar arguments support the patentability of claims 6 and 32.

C. Rejection of Claims 4, 24 and 31
under 35 U.S.C. 103(a)

Applicant respectfully submits that Mirouze does not remedy the foregoing deficiencies of the primary combination. Accordingly, claims 4, 24 and 31 are patentable both as depending from allowable base claims for the foregoing reasons, and for reasons attributable to their independently-recited subject matter.

D. Rejection of Claim 11
under 35 U.S.C. 103(a)

Claim 11 recites “wherein the user of the first device is unable to amend the copied data.” Applicant notes that the relevant portion of Cooper appearing at column 2, lines 9 – 12 states:

“The portion of the object model may not contain the objects in question, and so the client station may be unable to alter its copy of the model to reflect these changes.”

This portion of Cooper has to do with operations performed by a client station, and not by a user. Accordingly, Cooper neither describes nor suggests the subject matter of claim 11. Applicant therefore respectfully requests that the rejection of claim 11 be withdrawn.

E. Rejection of Claim 12
under 35 U.S.C. 103(a)

Applicant respectfully submits that Novak does not remedy the foregoing deficiencies of the primary combination. Accordingly, claim 12 is patentable both as depending from an allowable base claim for the foregoing reasons, and for reasons attributable to its independently-recited subject matter.

III. Conclusion

The Applicant submits that in light of the foregoing remarks the application is now in condition for allowance. Applicant therefore respectfully requests that the outstanding rejections be withdrawn and that the case be passed to issuance.

Respectfully submitted,

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Date

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